

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GLENN K. HILL)	
Claimant)	
VS.)	
)	
CHEYENNE COUNTY ROAD & BRIDGE)	Docket No. 230,639
Respondent)	
AND)	
)	
EMC INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from the March 3, 1998, preliminary hearing Order and the March 11, 1998, Order Nunc Pro Tunc entered by Assistant Director David A. Shufelt.

ISSUES

On appeal, respondent contends the Assistant Director exceeded his jurisdiction because claimant has not established an accidental injury arising out of and in the course of employment. Respondent also contends that the Assistant Director erred in awarding temporary total disability benefits back to May 22, 1997, and did not set proper limits on how long the temporary total disability benefits would be paid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the order for benefits should be affirmed.

By his Application for Preliminary Hearing, claimant seeks medical benefits, including left hip replacement, paid for by the respondent and its insurance carrier.

Claimant introduced, and the Assistant Director relied upon, the report from Dr. Aaron E. Parkhurst. Dr. Parkhurst states in that report that the claimant's heavy work activities accelerated and aggravated the claimant's hip condition and that claimant needs replacement of his total hip.

Respondent argues the conclusion by Dr. Parkhurst is based upon faulty information, namely the amount of heavy work claimant did. The doctor's records indicate the claimant advised him that one-half the work he was doing was heavy work. But, the claimant was actually operating equipment approximately 80 percent of the time and the heavy labor was less in duration and less strenuous than claimant described.

From our review of the record, the Appeals Board, nevertheless, concludes probably and most likely claimant's work activities did aggravate or accelerate claimant's hip condition and claimant is, therefore, entitled to have the treatment at respondent's expense. Dr. Parkhurst's opinion does not appear to turn on the precise amount of heavy work so much as the fact claimant did heavy work.

The second issue is the duration of the temporary total disability benefits. The period of temporary total disability benefits is not, in our view, a jurisdictional issue. The Appeals Board may review only those issues listed in K.S.A. 1997 Supp. 44-534a or issues which otherwise amount to an allegation that the administrative law judge exceeded his jurisdiction. K.S.A. 1997 Supp. 44-551. The period of temporary total disability is not either.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the March 3, 1998, Order and the March 11, 1998, Order Nunc Pro Tunc, entered by Assistant Director David A. Shufelt, should be, and the same are hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

c: Jeffrey E. King, Salina, KS
James M. McVay, Great Bend, KS
David A. Shufelt, Assistant Director
Philip S. Harness, Director